IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 46 OF 2003.

Sangappa V. Tenginakai,
r/o Camarcazana, H. No.
8, Mapusa. ... Applicant.

Versus

Atmaram J. Shettye,
r/o Camarcazana, Mapusa. ... Respondent.

Applicant in person.

Mr. Rohit Bras De Sa, Advocate for the Respondent.

Coram : P.V. HARDAS, J.

Date : 20th November 2003.

ORAL JUDGMENT.

This Criminal Revision Application has been filed by the original complainant assailing the Judgment of the learned Additional Sessions Judge, Mapusa, dated 13th August 2003, acquitting the respondent for offences punishable under Sections 307 and 364 read with Section 34 of the Indian Penal Code. Notice was issued to the respondent/accused and the respondent/accused is represented by his counsel. The applicant/original complainant was asked whether a lawyer from the Legal Aid Panel be appointed to argue the revision? However, he stated that he would argue it in person. Records and Proceedings of the trial Court have been called for.

2. The Apex Court in **K. Chinnaswamy Reddy v. State of Andhra Pradesh and another**, A.I.R. 1962 S.C. 1788, in paragraph 7 has held as under:-

" It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of S. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where

> the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of S. 439(4)."

3. The Apex Court in **Akalu Ahir and others v. Ramdeo Ram,** A.I.R. 1973 S.C. 2145, has in paragraph 10 held as under:-

> " No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial."

4. The Apex Court in **Bindeshwari Prasad Singh alias B.P. Singh and others v. State of Bihar (now Jharkhand) and another,** (2002) 6 S.C.C. 650, in paragraph 14 has held as under:-

> " We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal."

5. The Apex Court in **Thankappan Nadar and others**

**v. Gopala Krishnan and another,** (2002) 9 S.C.C. 393, has held that the evidence cannot be re-appreciated in revision at the instance of the complainant and the case cannot be remitted for trial afresh.

6. The applicant has urged the following grounds in support of his revision:-

(1) evidence has not been appreciated properly by the learned trial Court;

(2) evidence of P.W.3 is not reliable;

(3) the trial Court had not carried out any site inspection; and

(4) the trial Court has not favourably passed orders under Section 173(8) of the Code of Criminal Procedure in respect of further investigation by the police.

7. With the assistance of the parties, I have perused the Judgment of the learned trial Court and the evidence of the witnesses. The grounds raised by the applicant in the present revision for setting aside the acquittal of the respondent/accused are all related to the appreciation of evidence by the learned trial Court.

No manifest error on the point of law nor any illegality which will vitiate the trial has been pointed. The learned trial Court has appreciated the evidence and has recorded a finding. This is a second round of litigation before the High Court at the instance of the complainant. Earlier this Court was pleased to remand the case to the learned trial Court for affording an opportunity to the complainant to adduce the evidence of certain witnesses. In revision against acquittal, at the instance of the complainant, the High Court cannot re-appreciate the evidence and come to a different conclusion than the one arrived at by the trial Court for remanding the case for fresh trial. In view of the inherent limitation, unless and until the complainant is able to point out a manifest error on the point of law or material irregularities which vitiated the trial, the High Court in revision cannot set aside the finding of acquittal. The grounds urged in the revision are principally in respect of appreciation of evidence and, that being so, this Court in revision cannot set aside the acquittal.

8. I have given my anxious consideration to the finding arrived at by the learned trial Court and, according to me, no ground is made out for interference with the acquittal of the respondent/accused. The present revision is devoid of any merit and the same is

dismissed.

(P.V. HARDAS)
JUDGE.

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